

ENTERED

July 26, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

CARLOS GUADALUPE CANTU,

Petitioner,

VS.

BOBBY LUMPKIN

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CIVIL ACTION NO. 7:20-CV-00167

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is Petitioner Carlos Guadalupe Cantu's petition for a writ of habeas corpus filed pursuant to 28 U.S.C. § 2254, which had been referred to the Magistrate Court for a report and recommendation. On July 6, 2021, the Magistrate Court issued the Report and Recommendation, recommending that Respondent's Motion for Summary Judgment be **GRANTED**, that Petitioner's § 2254 petition be **DENIED**, and that Petitioner's claims be **DISMISSED** with prejudice. It was further recommended that a Certificate of Appealability be **DENIED**. Petitioner timely filed objections.

Pursuant to 28 U.S.C. § 636(b)(1)(c), the Court has made a de novo determination of those portions of the report to which objections have been made. As to those portions to which no objections have been made, in accordance with Federal Rule of Civil Procedure 72(b), the Court has reviewed the report for clear error.

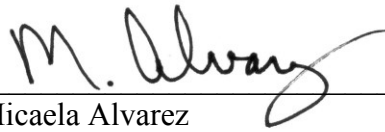
The Court specifically addresses only three of the objections. Petitioner first objects to this Court's jurisdiction claiming that because he was acquitted, this Court is without jurisdiction. As detailed in the Report and Recommendation, Petitioner was convicted in the 389th Judicial District Court of Hidalgo County, Texas. Hidalgo County is within this Court's jurisdiction and Petitioner submitted himself to this Court's jurisdiction when he filed his

petition in this Court. The objection is without merit. Petition next complains that he received the Report and Recommendation from the Houston Division as well as from the McAllen Division but that the one from the Houston Division was not certified. The objection is without merit as both Houston and McAllen are both part of the Southern District of Texas and there is no requirement that the Report be sent by certified mail. Petitioner also objects that he did not consent to the case proceeding before the Magistrate Court. The case was referred to the Magistrate Court for a report and recommendation only and consent is not required. Thus, this objection is also without merit. The remaining objections are wholly without merit as some are simply reassertions of the original claims, others are non-responsive and at least one appears to change the original claim.¹

Having thus reviewed the record in this case, the parties' filings, and the applicable law, the Court adopts the Report and Recommendation in its entirety. Accordingly, Respondent's Motion for Summary Judgment is **GRANTED**, and Petitioner's § 2254 petition is **DENIED**. Finally, Petitioner's claims are **DISMISSED** with prejudice, and a Certificate of Appealability is **DENIED**.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 26th day of July, 2021.



Micaela Alvarez
United States District Judge

¹ Petitioner now appears to acknowledge that the indictment was read to the petit jury, not the grand jury. Interestingly, the petitioner in the *Resendez* case cited by the Magistrate Court on this issue is now assisting Petitioner in this case.